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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 320

BROTHERHOOD OF RAILROAD TRAINMEN, AN UNINCORPORATED ASSOCIATION, AND BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, AN UNINCORPORATED ASSOCIATION,

Petitioners,

vs.

STATE OF CALIFORNIA AND DAVID T. LOCK

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA AND BRIEF IN SUPPORT THEREOF.

CLIFTON HILDEBRAND,
Counsel for Petitioners.

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vs.

STATE OF CALIFORNIA AND DAVID T. LOCK

PETITION FOR WRIT OF CERTIORARI

I

Jurisdiction

The jurisdiction of this Court is founded on Title 28, United States Code Annotated, Section 1257 (3).

II

Statute Involved

The case arises over the applicability of the provisions of the Federal Railway Labor Act, 45 U.S.C.A., Secs. 151, 152, set forth in the Appendix.

III

Question Presented

The question presented is whether or not the federal Railway Labor Act, 45 U.S.C.A., Secs 151, 152, applies to state owned and operated carriers engaged in interstate commerce.

IV

Summary Statement of Matter Involved

This action was brought in the Superior Court of the State of California, in and for the City and County of San Francisco, by the State of California against the Brotherhood of Railroad Trainmen, an unincorporated association, and Brotherhood of Locomotive Firemen and Enginemen, an unincorporated association, for declaratory relief, to determine the validity of a contract entered into by the petitioners and the Board of State Harbor Commissioners respecting rates of pay and working conditions of the employees of the State Belt Railway, a state owned railroad engaged in interstate commerce. The contract was entered into on September 1, 1942, pursuant to the provisions of the Federal Railway Labor Act, supra. The contract has been in full force and effect ever since said date.

The action was tried on a stipulated statement of facts (R. Page 1) and the trial Court and the District Court of Appeals of the State of California both held the contract to be valid. The Supreme Court of the State of California reversed the District Court of Appeals over the strong dissent of Justice Carter (Opinion, Page 34) and held that the contract was invalid upon the ground that Congress did not intend the Federal Railway Labor Act to apply to state owned railroads engaged in interstate commerce (Opinion, Page 34).

V

Reasons for Allowance of Writ

This case involves the application of the provisions of a statute of the United States, the Federal Railway Labor Act, 45 U.S.C.A., Secs. 151, 152, and more particularly its application to wages and working conditions of employees of a state owned railroad engaged in interstate commerce.

The Supreme Court of the State of California has decided that the Federal Railway Labor Act, supra, does not apply to state employees engaged in interstate commerce, which is contrary to the applicable decisions of the Supreme Court of the United States, and other federal decisions, as well as being contrary to the intent of Congress, and the decision heretofore made by the State of California Supreme and Appellate Courts.

In the interest of the uniformity of the application of the Federal Railway Labor Act, supra, and to establish a uniformity of decisions, this Court should grant the Writ as prayed and correct the decision heretofore rendered herein.

Prayer

Wherefore, petitioners pray that this petition be granted, and for such other and further relief in the premises as may be proper and just.

CLIFTON HILDEBRAND.

SUPREME COURT OF THE UNITED STATES

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BROTHERHOOD OF RAILROAD TRAINMEN, AN UNINCORPORATED ASSOCIATION, AND BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, AN UNINCORPORATED ASSOCIATION,

Petitioners,

vs.

STATE OF CALIFORNIA AND DAVID T. LOCK

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion Below

The opinion of the Supreme Court of California has not yet been officially reported, but is set forth in 232 Pac. (2) 857, and in the Record, page 34, et seq.

II

Jurisdiction of Court

The jurisdiction of this Court is founded on Title 28, United States Code Annotated, Sec. 1257 (3), a right being specially set up and claimed under a statute of the United States, namely the Federal Railway Labor Act, 45 U.S.C.A., Secs. 151, 152.

The judgment of the Supreme Court of California was

rendered June 20, 1951 (R. 34), a petition for rehearing was filed June 20, 1951 (R. 51), a modification of opinion was filed July 19, 1951 (R. 54), and the judgment became final July 20, 1951.

III

Statement of the Case

The State Belt Railroad operates on the water front of San Francisco and is owned by the State of California, and its management, control and operation have always been committed by statute to the Harbor Board (See Agreed Statement of Facts, R., Page 1). On September 1, 1942, the Board of State Harbor Commissioners entered into a contract respecting the rates of pay, rules and working conditions affecting certain employees of the said State Belt Railroad, who are members of the petitioning associations.

The action was instituted by the State of California under the provisions of Section 1060 of the Code of Civil Procedure of the State of California for a declaration of its rights and duties under the aforesaid contract.

The State contended that the contract was invalid because the employees affected were members of the State Civil Service and that their pay and working conditions are to be governed exclusively by legislation or administrative rules and not by collective bargaining contracts. The petitioners herein contended that the State, as owner of the Belt Railroad, is subject to the Federal Railway Labor Act, supra, which secures to employees of railroads engaged in interstate commerce the right to enter into collective bargaining agreements with their employer concerning rate of pay, rules and working conditions.

The Supreme Court of California held that the contract was invalid, reversing the decision of the trial Court and the opinion of the District Court of Appeal, holding:

(1) That the Federal Railway Labor Act, 45 U.S.C.A., Sec. 151, did not apply because it did not expressly include state owned railroads;

(2) That the establishment of wage scales and working conditions of public employees are traditionally established state statute and administrative regulations.

IV

Specification of Error

We submit that the Supreme Court of California was in error:

(a) In holding that the Federal Railway Labor Act did not apply to employees of a state owned railroad engaged in interstate commerce.

V

Argument

The Majority Opinion of the Supreme Court of the State of California Erred in Holding That the Federal Railway Labor Act Did Not Apply to State Employees

The question presented is whether the State Belt Railroad is subject to the provisions of the Federal Railway Labor Act, 45 U.S.C.A., page 985. It is stated in the majority opinion that if Congress had intended that the Act apply to State employees, Congress would have expressly stated that fact in the Act. This is in direct conflict with all federal legislation having to do with state owned and operated railroads engaged in interstate commerce.

In the case of *United States* v. *State of California*, 297 U. S. 175, 80 L. Ed. 567, 56 S. Ct. 421, which was a case which arose out of a violation by the same State Belt Railroad of the Federal Safety Appliance Act, 45 U.S.C.A., Sec. 6, Ch. 2, the state contended that the Belt Railroad was

not subject to the Act but the United States Supreme Court held that it was, and in so holding, stated as follows:

> "California, by engaging in interstate commerce by rail, has subjected itself to the commerce power and is liable for a violation of the Safety Appliance Act, as are other carriers, unless the statute is to be deemed inapplicable to state owned railroads because it does not specifically mention them. . . . The danger to be apprehended is as great and commerce may be equally impeded whether the defective appliance is used on a railroad which is state owned or privately owned. No convincing reason is advanced why interstate commerce and persons and property concerned in it should not receive the protection of the act whenever a state, as well as a privately owned carrier brings itself within the sweep of the statute, or why its all-embracing language should not be deemed to afford that protection."

State of California v. *Anglim* (9th CCA), 129 Fed. (2) 455, held that the State Belt Railroad was subject to the Federal Carriers Taxing Act, 45 U.S.C.A., Sec. 261, et seq.

Maurice v. *State of California*, 43 C.A. (2) 270, held that the State Belt Railroad was subject to the Federal Safety Appliance Act and also subject to the Federal Employers Liability Act, 45 U.S.C.A., Ch. 2.

In all of these actions the same contention was made that because Congress had not specifically mentioned state operated railroads, it was not intended that these acts should apply. In each case that contention was not supported.

The source of the Federal Safety Appliance Act, the Federal Employers Liability Act, the Federal Carriers Taxing Act and the Federal Hours of Service Act is the Commerce Clause and that, too, is the source of the Railway Labor Act. If the State Belt Railroad is within the purview of all of this interstate legislation, it is certainly subject to

the Railway Labor Act. It is unreasonable to say that the Federal Railroad Retirement Act applies to this railroad as to pensions, but that the State Civil Service Law applies as to working conditions.

The Federal Court has already held that governmental employees are subject to the Railway Labor Act. In *National Council, etc.,* v. *Sealy,* 56 Fed. Supp. 720, the Court, in referring to the cases which we have just cited, stated that these cases "settle it that a railroad, etc.; owned by the state or, as here, by a city which is an agency of the state is, under certain circumstances and perhaps generally speaking, within the coverage of the (Railway Labor) Act."

Wherever Congress has intended that governmental employers be excluded from the operation of federal legislation, the Act has so stated. The National Labor Relations Act of 1937, the Labor Management Relations Act of 1947, 29 U.S.C.A., Secs. 141, 152 (2), the Fair Labor Standards Act of 1938, 29 U.S.C.A., Secs. 201, 203 (d), the War Labor Disputes Act of 1943, 50 U.S.C.A., Secs. 1501, 1502 (d), all expressly exclude governmental employers from their respective provisions.

The opinion of the Supreme Court of the State of California is in direct conflict with all of these cases as was clearly stated in the case of *United States* v. *State of California, supra,* as follows:

> "We can perceive no reason . . . to exempt a business carried on by a state from the otherwise applicable provisions of an Act of Congress, all-embracing in scope and national in its purpose."

Not only is the opinion of the Supreme Court of the State of California in conflict with the above federal law, which is controlling where a federal statute is subject to interpretation, but also the opinion is in conflict with the estab-

lished law of the State of California as announced in the case of *Maurice* v. *State of California, supra.*

It is submitted that the opinion of the Supreme Court of the State of California is in conflict with previously established law dealing with similar subject matter and that it erroneously interpreted the Federal Railway Labor Act so as not to apply it to persons that Congress intended the act to protect.

Respectfully submitted,

CLIFTON HILDEBRAND,
Attorney for Petitioners.

APPENDIX

Railway Labor Act

Sec. 151

When used in this chapter and section 225 of Title 28 and for the purpose of said chapter and section—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to chapter 1 of Title 49, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body judicial or otherwise when in the possession of the business of any such "carrier": Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this chapter.

Third. The term "Mediation Board" means the National Mediation Board created by this chapter.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between

any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Commission.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district Court" includes the district court of the United States for the District of Columbia; and the term "circuit court of appeals" includes the United States Court of Appeals for the District of Columbia.

This chapter may be cited as the "Railway Labor Act." May 20, 1926, c. 347, sec. 1, 44 Stat. 577; June 7, 1934, c. 426

48 Stat. 926; June 21, 1934, c. 691, sec. 1, 48 Stat. 1185; June 25, 1936, c. 804, 49 Stat. 1921; Aug. 13, 1940, c. 664, sec. 2, 3, 54 Stat. 785, 786.

Sec. 151a

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions. May 20, 1926. c. 347, sec. 2, as added June 21, 1934, c. 691, sec. 2, 48 Stat. 1186.

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BRIEF OF RAILWAY LABOR EXECUTIVES' ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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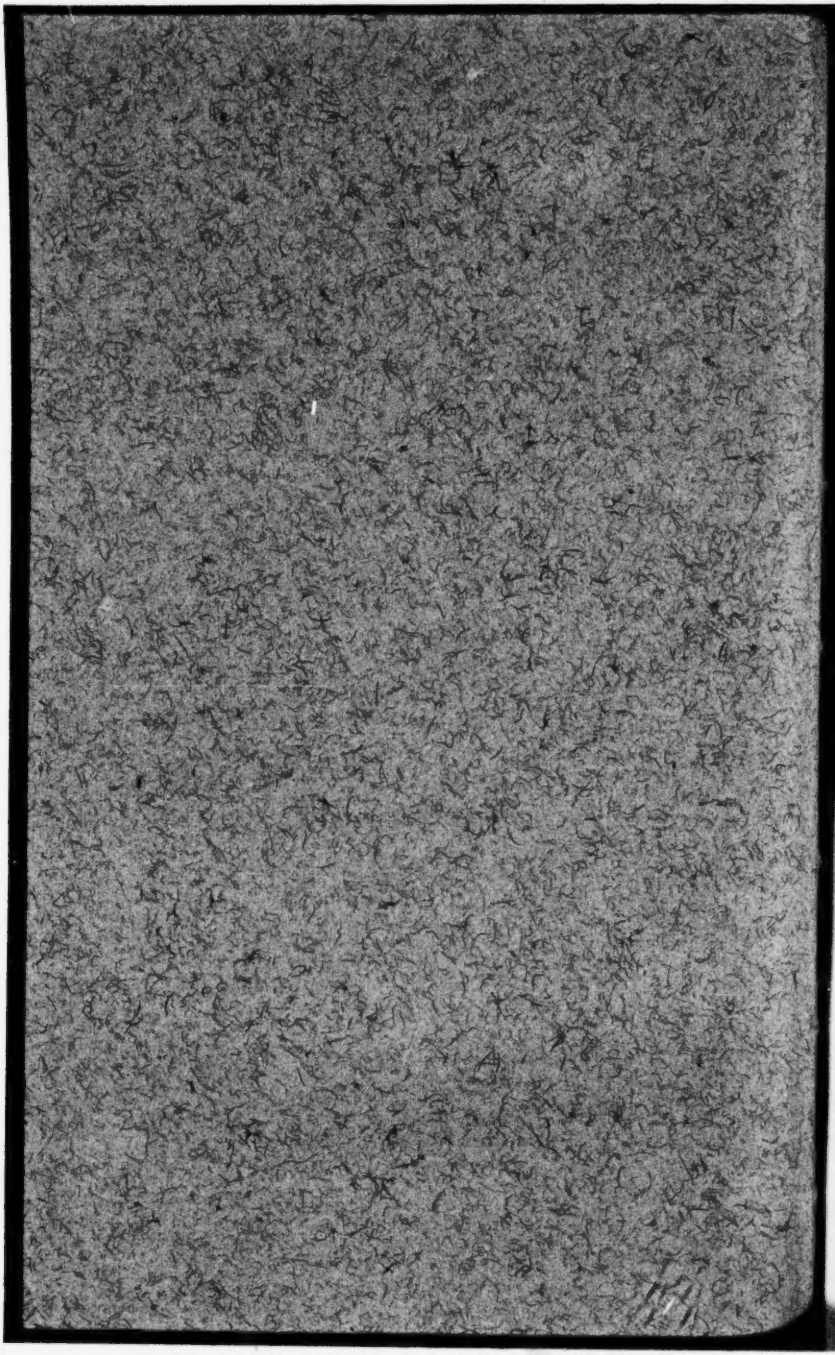

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BRIEF OF RAILWAY LABOR EXECUTIVES' ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

STATEMENT OF INTEREST.

This brief is filed by the Railway Labor Executives' Association as amicus curiae in support of the petition for certiorari upon written consent of the parties to the case obtained pursuant to the provisions of paragraph 9(b) of Rule 27 of the Rules of this Court and filed in the office of the Clerk.

The Railway Labor Executives' Association is a voluntary unincorporated association with which are affiliated the following standard national and international railway labor organizations:

Switchmen's Union of North America
Order of Railroad Telegraphers
American Train Dispatchers' Association
Railway Employes' Department, A. F. of L.
International Association of Machinists
International Brotherhood of Boilermakers, Iron Ship Builders & Helpers of America
International Brotherhood of Blacksmiths, Drop Forgers and Helpers
Sheet Metal Workers' International Association
International Brotherhood of Electrical Workers
Brotherhood Railway Carmen of America
International Brotherhood of Firemen & Oilers
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen of America
National Organization Masters, Mates & Pilots of America
National Marine Engineers' Beneficial Association
International Longshoremen's Association
Hotel & Restaurant Employees and Bartenders International Union
Railroad Yardmasters of America
Brotherhood of Sleeping Car Porters

The foregoing labor organizations represent for purposes of collective bargaining under the Railway Labor Act more than one million railroad employees in the service of virtually every carrier by railroad in the United States. Pursuant to the provisions of the Railway Labor Act, 45 U. S. C., Sec. 151 *et seq.*, these affiliated labor organizations maintain with said carriers, on behalf of employees which they represent, collective bargaining agreements governing the rates of pay, rules, and working conditions of such employees. These organizations, as well as the carriers by

railroad, are required by the Railway Labor Act to exert every reasonable effort to make and maintain such agreements and to settle all disputes concerning them in accordance with its terms in order to avoid interruptions to commerce.

This case presents the question of whether the California State Belt Railway, a state owned and operated carrier by railroad admittedly engaged in interstate commerce (R. 35), is subject to the provisions of the Railway Labor Act. The Supreme Court of California, reversing a judgment of the trial court and the District Court of Appeal, has held that it is not. Review of that decision by this Court is of particular importance to the Railway Labor Executives' Association because most of its affiliated organizations have for many years maintained agreements under the Railway Labor Act with state owned and operated carriers by railroad similar to the California State Belt Railway. If the decision of the California Supreme Court is permitted to stand, it would unquestionably seriously jeopardize the ability of these affiliated organizations to continue to make and maintain agreements with state owned and operated railroads and to avail themselves of the procedures established by the Railway Labor Act for the settlement of disputes with such carriers. Moreover, for reasons later to be explained, the California Supreme Court's decision creates confusion in the administration of related federal laws in which these affiliated organizations have a direct and substantial interest on behalf of their members.

It is not with any thought that the reasons why the writ should be granted in this case will not be fully and capably presented by counsel for petitioners that we join them as amicus curiae in urging review by this Court. Rather, it is felt that the direct concern of the Association and its affiliated organizations in the important federal question here presented for review, as well as the potential practical effect of the lower court's decision on many other railroad employees than those here involved, so far transcend the in-

terests of the parties in this particular controversy as to justify presentation of the views of an organization which may fairly be said to represent railroad labor as a whole.

OPINIONS BELOW.

The memorandum opinion of the trial court is unreported. The affirming opinion of the District Court of Appeal is reported in 99 A. C. A. 505, 222 P. 2d 27. The opinion of the majority of the Supreme Court of California (R. 34-43) and the dissenting opinion (R. 44-51) are reported in 232 P. 2d 857.

JURISDICTION.

As stated in the Petition, the judgment of the Supreme Court of California was entered on June 20, 1951 (R. 34), a petition for rehearing was filed June 20, 1951 (R. 51), a modification of opinion was filed on July 19, 1951 (R. 54), and a final judgment entered on July 20, 1951. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

The federal question here sought to be reviewed was raised by the State of California, which owns the State Belt Railroad, through an action for a declaratory judgment filed in the Superior Court of the State of California in and for the City and County of San Francisco (the court of first instance). By this action the State sought to have determined the validity of a contract entered into on September 1, 1942, by petitioners and its operating agency, the Board of State Harbor Commissioners for San Francisco Harbor, pursuant to the provisions of the Railway Labor Act (45 U. S. C., Sec. 151 *et seq.*) respecting the rates of pay and working conditions of employees of the State Belt Railroad (R. 1, 34). The State of California contended that it was not subject to the provisions of the Railway Labor Act and that the said contract was invalid in part because the civil service laws of the state are the exclusive measure of the rights and privileges of the state civil service employees

and the said contract could not provide for provisions derogatory to said laws (R. 5-6). In its answer to the complaint for declaratory judgment, the respondent Brotherhoods contended that the State of California and its agency, the Board of State Harbor Commissioners for San Francisco Harbor, were subject to the Railway Labor Act, that the Railway Labor Act could be constitutionally applied to the State of California, and that the provisions of the said contract superseded any provisions of the state civil service laws with which they conflicted (R. 6). In its Findings of Fact and Conclusions of Law, the Superior Court upheld the aforesaid contentions of respondent Brotherhoods (R. 7-11) and entered judgment accordingly (R. 11-12). An appeal was taken to the District Court of Appeal which affirmed the trial court's judgment, 99 A. C. A. 505, 222 P. 2d 27. Subsequent appeal from this decision was taken to the Supreme Court of the State of California (R. 12-13) by the State of California and the intervenor, David T. Lock, in which the applicability of the Railway Labor Act to the State Board of Harbor Commissioners for San Francisco Harbor was directly drawn in question (R. 14-18). The Supreme Court of California held that Congress did not intend the Railway Labor Act to apply to state owned and operated carriers, and accordingly reversed the judgment below in part for that reason (R. 42-43). The court also reversed the judgment of the District Court of Appeal for the further reason that approval of the contract between the Brotherhoods and the Harbor Board by the State Department of Finance is required under state law before the state may be bound (R. 55; *cf.* R. 42-43).* A dissenting opinion was filed in which it was reasoned that the Railway Labor Act was applicable to the State Belt Railroad and that the holding of the majority led to irreconcilable conflicts in state and federal law (R. 44-51).

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* The inadequacy of this non-federal ground to support the state court judgment and thus bar review of the federal question here presented is discussed *infra*.

QUESTION PRESENTED.

Whether a state owned and operated carrier by railroad, concededly engaged in interstate commerce, is subject to the provisions of the Railway Labor Act.

STATUTE INVOLVED.

The pertinent provisions of the Railway Labor Act, as amended (45 U. S. C., Sec. 151 *et seq.*) are adequately set forth in the Appendix to the Petition at pages 11-13.

STATEMENT OF THE CASE.

The factual statement of the case is adequately set forth in the Petition.

REASONS FOR GRANTING THE WRIT.

1. The California Supreme Court Has Decided a Federal Question of Substance Not Heretofore Determined by This Court, and Has Decided It in a Way Probably Not in Accordance with Applicable Decisions of This Court.

By holding that the Railway Labor Act is not applicable to state owned and operated carriers by railroad engaged in interstate commerce, the California Supreme Court has decided an important question of federal law not yet determined by this Court. The primary basis of the lower court's holding is that in passing the Railway Labor Act Congress did not intend to include the state as a carrier-employer. In support of this conclusion, the lower court asserts that it is well settled that statutes, such as the Railway Labor Act, will not be applied to a sovereign in the absence of express words to that effect, and that the legislative history of the Railway Labor Act gives no indication that it was intended to be applied to any but private carriers.

Essentially this same contention was advanced to this Court by the State of California in *United States* v. *State*

of California, 297 U. S. 175, wherein the Court was concerned with the applicability of the Federal Safety Appliance Act to the same Belt Railroad involved in the instant case. In answer to the contention that this statute did not apply to state owned railroads because they are not specifically mentioned therein, this Court unanimously held (pp. 185-187):

"California, by engaging in interstate commerce by rail, has subjected itself to the commerce power, and is liable for a violation of the Safety Appliance Act, as are other carriers, unless the statute is to be deemed inapplicable to state-owned railroads because it does not specifically mention them. The federal Safety Appliance Act is remedial, to protect employees and the public from injury because of defective railway appliances, . . . and to safeguard interstate commerce itself from obstruction and injury due to defective appliances upon locomotives and cars used on the highways of interstate commerce, even though their individual use is wholly intrastate. . . .

"In *Ohio* v. *Helvering, supra,* it was held that a state, upon engaging in the business, became subject to a federal statute imposing a tax on those dealing in intoxicating liquors, although states were not specifically mentioned in the statute. The same conclusion was reached in *South Carolina* v. *United States, supra;* and see *Helvering* v. *Powers, supra.* Similarly the Interstate Commerce Commission has regarded this and other state-owned interstate rail carriers as subject to its jurisdiction, although the Interstate Commerce Act does not in terms apply to state-owned rail carriers. . . .

"Respondent invokes the canon of construction that a sovereign is presumptively not intended to be bound by its own statute unless named in it, . . . The presumption is an aid to consistent construction of statutes of the enacting sovereign when their purpose is in doubt, but it does not require that the aim of a statute fairly to be inferred be disregarded because not explicitly stated. . . . We can perceive no reason for extending it so as to exempt a business carried on by a state from the otherwise applicable provisions of an act of Congress, all-embracing in scope and national

> in its purpose, which is as capable of being obstructed by state as by individual action. Language and objectives so plain are not to be thwarted by resort to a rule of construction whose purpose is but to resolve doubts, and whose application in the circumstances would be highly artificial. It was disregarded in *Ohio* v. *Helvering, supra,* and *South Carolina* v. *United States, supra.* See *Heiner* v. *Colonial Trust Co.,* 275 U. S. 232, 234, 235."

The foregoing reasoning is directly applicable in principle in the instant case, and the views of the lower court are incompatible therewith. In other cases, this Court has similarly rejected the contention that a failure to expressly name governmental agencies in a federal regulatory statute implies an intention by Congress to exclude the state from the application of the statute. *United States* v. *Arizona,* 295 U. S. 174, 184; *State of California* v. *United States,* 320 U. S. 577, 585-6.

The lower court seeks to avoid the necessary conflict of its decision with the foregoing decisions of this Court by contending that considerations which may justify the application of general safety and taxing measures to state owned carriers are not controlling in determining the intended scope of a statute which purports to regulate and supervise employer-employee relationships (R. 37). This argument overlooks the plenary power of Congress over commerce and the purposes for which the Railway Labor Act was enacted. It is well recognized that the Railway Labor Act is designed not only to secure certain rights and privileges to employees of carriers engaged in interstate commerce, but also to "avoid any interruption to commerce or to the operation of any carrier engaged therein" by requiring resort to the procedures it provides in the event of disputes "before they reach acute stages provocative of strikes". *Slocum* v. *Delaware, L. & W. R. Co.,* 339 U. S. 239, 242. Obviously, such purpose is equally as important in the federal control of interstate carriers by railroad as the protection of interstate commerce under the Safety Ap-

pliance Act from obstruction and injury due to defective railway appliances.

Thus, although the precise question here concerns the Railway Labor Act, rather than the Safety Appliance Act, the difference in the regulatory purpose of Congress certainly does not imply an intent to include the state in the one statute and exclude it from the other.

As stated by this Court in *United States* v. *California, supra* (p. 186) "the Interstate Commerce Commission has regarded this [the California State Belt Railroad] and other state-owned interstate carriers as subject to its jurisdiction, although the Interstate Commerce Act does not in terms apply to state-owned rail carriers [citing cases]." Similarly, the National Mediation Board, the agency charged with the administration of the Railway Labor Act, has uniformly regarded the California State Belt Railroad and other state-owned carriers engaged in interstate commerce as subject to its jurisdiction.

It is clear that a state could not endow corporations with immunity from federal regulations such as those embodied in the Railway Labor Act, nor could it pass laws dealing with the same subject matter. *Southern Ry. Co.* v. *R. R. Comm. Indiana,* 236 U. S. 439; *Gilvary* v. *Cuyahoga Valley Ry.,* 292 U. S. 57, 60-61; *Northern Pac. R. Co.* v. *Washington,* 222 U. S. 370; *Interstate Commerce Commission* v. *Detroit G. H. & M. R. Co.,* 167 U. S. 633, 642. It seems equally clear that a state cannot, by itself undertaking the operation of a railroad engaged in interstate commerce, nullify the power of the federal government to regulate such railroads in the conduct of their labor relations and in the settlement of labor disputes.

2. The State Court's Construction of the Railway Labor Act Conflicts with Federal Court Decisions on Substantially the Same Issue and Creates Confusion in the Administration of Related Federal Statutes.

In *State of California* v. *Anglim,* 129 F. 2d 455 (C. A. 9th), *cert. den.* 317 U. S. 669, the court held that the State of California, by its ownership and operation of the State Belt Railroad, was subject to the Carriers' Taxing Act, 26 U. S. C., § 1500 *et seq.* This act, a companion statute to the Railway Labor Act, levies the taxes later paid out as benefits under the Railroad Retirement Act to employees subject to the Railway Labor Act.* It defines as carriers subject to its terms "an express company, sleeping-car company, or carrier by railroad, subject to Part I of the Interstate Commerce Act". 26 U. S. C. § 1532(h). This is the identical definition of the term "carrier" contained in the Railway Labor Act, 45 U. S. C. § 151 First. It is undisputed that the California State Belt Railroad is a carrier subject to Part I of the Interstate Commerce Act (R. 3). Accordingly, the Supreme Court of California has held the State Belt Railroad to be excluded by implication from an identically worded coverage definition held by the Circuit Court of Appeals for the Ninth Circuit to include the same state-owned carrier. Under such a conflict in the interpretation of the same definition in companion federal statutes, we have the anomalous situation of railroad employees subject to the benefits of a federal retirement system but subject to state control of their rates of pay prior to their retirement, which are in turn subject to federally imposed taxes to provide the retirement fund. Clearly, identical coverage definitions contained in cognate statutes affecting the same railroad employees should be identically construed and applied. *Uni-*

* The Carriers' Taxing Act, the Railway Labor Act, the Railroad Retirement Act, and the Railroad Unemployment Insurance Act compose the special group of railroad statutes. These four acts necessarily coalesce, and their mutual interdependence is well recognized.

versal Carloading & Distributing Co. v. *Pedrick,* 184 F. 2d 64, 65-66 (C. A. 2d); *Despatch Shops* v. *Railroad Retirement Board,* 154 F. 2d 417, 418 (C. A. 2d).

The precise question here involved was recognized as one which is now beyond dispute in *National Council of Railway Patrolmen's Union, A. F. of L.* v. *Sealy,* 56 F. Supp. 720 (S. D. Texas). This case involved a suit to require the Galveston Wharves, which owned and operated a terminal railway system, to bargain with plaintiffs under the Railway Labor Act. In the course of its opinion holding that the particular employees involved in the suit were not employees entitled to representation under the Railway Labor Act, the court nevertheless conceded that state and city owned railroads were subject to its terms. On this point the federal district court said:

> "United States v. California, 297 U. S. 175; State of California v. Latimer, 305 U. S. 257; and State of California v. Anglim, 9 Cir., 129 F. 2d 455, of course, settle it that a railroad, etc., owned by the State or as here by a City which is an agency of the State is, under certain circumstances and perhaps generally speaking, within the coverage of the Act."

On appeal the Fifth Circuit Court of Appeals, in affirming the district court, observed on the point under discussion:

> "We need not detail the status of the Board of Trustees under the City's charter. The Mayor is ex officio one of them. We think they are an agency of the City in charge of this railway and wharf terminal business. It is conceded as respects the railroads they are a carrier within the meaning of the Railway Labor Act."

3. The Non-Federal Ground Asserted in the Decision Below Does Not Preclude Review of the Federal Question Presented Because it is Not Adequate to Support the State Court Judgment.

In addition to its holding that the Railway Labor Act was inapplicable to state owned railroads, the lower court reversed the judgment of the District Court of Appeal

for the further reason that the contract between the Brotherhoods and the Harbor Board is required under state law to be approved by the State Department of Finance before the state may be bound (R. 55; *cf.* R. 42-43).

Although respondents may contend that this additional reason for reversal of the District Court of Appeal constitutes a bar to the review here sought, we submit that the non-federal ground asserted is inadequate to independently support the judgment. This Court applies its own standards in determining such questions (*Abie State Bank* v. *Bryan,* 282 U. S. 765, 773), and it is only when the non-federal ground is adjudged adequate that review will be declined. *Wood* v. *Chesborough,* 228 U. S. 672, 676-680; *West Chicago St. R. Co.* v. *Illinois ex rel. Chicago,* 201 U. S. 506, 519-520.

Here the non-federal holding of the District Court of Appeal reversed by the Supreme Court was the former's conclusion that the vesting of certain enumerated contracting powers in the Harbor Board necessarily excluded the exercise of the same powers or need for approval by the Department of Finance or any other state agency. *State* v. *Brotherhood of Railroad Trainmen,* 222 P. 2d 27, 31-33. The District Court of Appeal therefor found it unnecessary to pass upon the question of whether, if such approval was required, it had in fact been given by the Department of Finance. Moreover, although requested by the State to do so, the trial court refused to make a finding of fact that "the contract which by its terms is presently in effect was not approved by the State Personnel Board or the State Department of Finance." (R. 11).

Thus, the Supreme Court of California did not have support in the record before it that approval had not, in fact, been made by the Department of Finance, but could only conclude as a matter of law that such approval was required. This is precisely what the court below finally did. Although it originally stated in its opinion that the salary provisions of the contract involved "have never been

approved by the State Department of Finance" (R. 42), upon a petition for rehearing specifically raising the point under discussion (R. 51, 53-54), it modified its opinion to delete the above quoted finding of fact and substituted its holding that "the Harbor Board could not properly enter into the contract with the brotherhoods and bind the state without the approval of the Department of Finance, as required by section 18004 of the Government Code." (R. 55).

Clearly, the bare conclusion of law that approval by the State Department of Finance is required by state law is inadequate to support a judgment that the contract between the Harbor Board and the Brotherhoods was invalid. There is lacking the necessary corollary finding by the state Supreme Court that the asserted requirement under state law was not in fact met.

On the other hand, there is evidence of record that since the contract had been in force since 1942, and the wages of employees had been paid in accordance with its terms since that time, the Department of Finance "gave implicit approval" of the contract for the reasons advanced by the dissenting judge (R. 49). There appears to be no evidence of record which would support a finding that the Department of Finance indicated its disapproval of the contract, questioned its validity, or did not in fact approve it. Very possibly, that is the reason the lower court found it necessary to modify its opinion on this point upon reconsideration. In any event, whatever the lower court's intention, it is clear that this Court will review a state court's findings "where a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it. *Fiske* v. *Kansas,* 274 U. S. 380, 385-386; *Creswill* v. *Grand Lodge,* 225 U. S. 246, 261; *Sterling* v. *Constantin,* 287 U. S. 378, 398.

At the very least, it must be concluded that by its modified opinion on the non-federal issue the lower court has omitted to pass upon a question of fact which is basic to

the issue presented. It is well established that under such circumstances, a litigant may not be deprived of a federal right, and that this Court will examine the record itself to determine what facts reasonably might be found therefrom. *Brooklyn Savings Bank* v. *O'Neil,* 324 U. S. 697, 703; *Merchants' Natl. Bank* v. *Richmond,* 256 U. S. 635, 638; *Carlson* v. *Washington,* 234 U. S. 103, 105.*

In view of the foregoing, it seems clear that the non-federal ground of the decision below does not preclude certiorari of the federal question here presented.

CONCLUSION.

For the foregoing reasons, it is respectfully urged that the question presented for review is clearly one of general importance. Its authoritative determination by this Court is essential to resolve apparent conflicts with decisions of this Court and other federal courts, to clarify the intent and coverage of other related federal laws, and to provide future guidance in the administration of the Railway Labor Act in cases involving state operation of railroads engaged in interstate commerce.

Respectfully submitted,

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Dated at Washington, D. C.,
October 23, 1951.

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* Upon examination of the record this Court might well conclude that the non-federal ground of the decision below is so inextricably interwoven with the federal question involved (*cf.* R. 50, 41 note, 35, 6, 8-9) or so untenable (*cf. State* v. *Brotherhood of Railroad Trainmen,* 222 P. 2d 27, 31-35) as to require decision by this Court on all the related questions, federal and non-federal (cf. *Enterprise Irrig. Dist.* v. *Farmers Mut. Canal Co.,* 243 U. S. 157, 164) in order to avoid widespread confusion and conflicting decisions in the application of state civil service laws and regulations to employees subject to the Railway Labor Act.